

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

GARY HARRIS,	:	<b>O P I N I O N</b>
Appellant,	:	
- vs -	:	<b>CASE NO. 2009-A-0059</b>
RONALD PRISTERA, FIRE CHIEF, CITY OF ASHTABULA FIRE DEPT.,	:	
Appellee.	:	

Administrative Appeal from the Ashtabula County Court of Common Pleas, Case No. 2009 CV 1077.

Judgment: Affirmed.

*Gary Harris*, pro se, PID# 28460-138, Federal Correctional Institution Elkton, P.O. Box 10, Lisbon, OH 44432 (Appellant).

*Michael Franklin*, Ashtabula City Solicitor, and *Lori B. Lamer*, Assistant Ashtabula City Solicitor, Ashtabula Municipal Court, 110 West 44th Street, Ashtabula, OH 44004 (For Appellee).

DIANE V. GRENDALL, J.

{¶1} Appellant, Gary Harris, appeals the November 25, 2009 Judgment Entry of the Ashtabula County Court of Common Pleas, dismissing Harris' appeal from the Ohio Board of Building Appeals' Final Order, based on a lack of standing, the February 9, 2010 Judgment Entry, overruling Harris' Motion for Stay of Proceedings, and the

August 27, 2010 Judgment Entry, overruling his Motion for a New Trial or Relief From Judgment.<sup>1</sup> For the following reasons, we affirm the decision of the trial court.

{¶2} On August 4, 2009, the Ohio Board of Building Appeals (Board) heard an appeal based on a citation issued by the Ashtabula Fire Department. The citation was issued against the property located at 4509-4515 Main Avenue, known as the former Carlisle's Department Store, located in Ashtabula, Ohio. The hearing on this citation, held before the Board, was entitled "Pittsburgh Mellon Holding Trust v. Ronald Pristera." On August 6, 2009, the Board issued a Final Order, upholding the citation, against Pittsburgh Mellon Holding Trust (Pittsburgh Mellon).

{¶3} On October 6, 2009, Gary Harris filed a Notice of Appeal with the Ashtabula County Court of Common Pleas, from the August 6, 2009 Final Order of the Board.

{¶4} On November 3, 2009, appellee, Ronald Pristera, Chief of the Ashtabula Fire Department, filed a Motion to Dismiss the Appeal, claiming that the action was not being prosecuted by or in the name of the real party in interest. Pristera asserted that the administrative proceedings below were in the name of Pittsburgh Mellon and the Final Order was directed at Pittsburgh Mellon. Pristera asserted that Pittsburgh Mellon is the owner of the Main Avenue Property and that Harris did not participate in the Board proceedings or object during the proceedings.

{¶5} Harris filed a Reply to the Motion to Dismiss on November 24, 2009. Harris asserted that he was found to be the alter ego of the Pittsburgh Mellon Trust by the Cuyahoga County Domestic Relations Court.

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1. Harris filed his original Notice of Appeal on December 28, 2009. On September 30, 2010, Harris filed a Notice of Appeal regarding the February 9, 2010 Judgment Entry and the August 27, 2010 Judgment Entry, which was construed by this court as an amended Notice of Appeal, pursuant to App.R. 3(F).

{¶6} The trial court issued a Judgment Entry on November 25, 2009, stating that the title of the real estate located at 4509-4515 Main Avenue “remains in the name of the Pittsburgh Mellon Trust and Gary Harris is not the titled owner, and since he is not an attorney, he is not permitted to represent the Pittsburgh Mellon Trust.” The trial court granted Pristera’s Motion to Dismiss the Appeal.

{¶7} On December 18, 2009, Harris filed a Motion for Relief From Judgment, pursuant to Civ.R. 60(B), asserting that evidence regarding Harris’ ownership of the Main Avenue property was omitted or not considered. He asserted that following divorce proceedings held before the Cuyahoga County Domestic Relations Court, he was awarded rights to the Main Avenue property. The Judgment Entry of that court, entered on September 22, 2003, states that Harris “is awarded all right, title and interest in” the real estate located at 4509 and 4515 Main Avenue.

{¶8} On December 28, 2009, Harris filed a Motion for Stay of Proceedings.

{¶9} On February 9, 2010, the court issued a Judgment Entry overruling Harris’ Motion for Stay of Proceedings,

{¶10} On February 26, 2010, Harris filed a Motion for New Trial or Relief from Judgment.

{¶11} On August 27, 2010, the trial court overruled these motions, stating that Harris “was not a party to the underlying administrative proceeding from which the administrative appeal at bar was taken,” and that the appeal was properly dismissed by the court in its November 25, 2009 Judgment Entry.

{¶12} Harris timely appeals and asserts the following assignment of error:

{¶13} “The Trial Court erred [in] holding Gary Harris is not the sole owner[/]party of interest of the Carlisle’s Building, overlooking collateral estoppel, or issue preclusion,

binds a person to a finding of fact or point of law determined by a court of competent jurisdiction.”

{¶14} The standard governing an administrative appeal taken pursuant to R.C. 3737.43 and R.C. 119.12 is that “a court of common pleas must affirm the decision of an administrative agency when that decision is supported by reliable, probative, and substantial evidence and is in accordance with the law.” *Ruckstuhl v. Ohio Dept. of Commerce*, 11th Dist. No. 2008-G-2873, 2009-Ohio-3146, at ¶19; *Baluk v. Div. of State Fire Marshall*, 8th Dist. No. 61734, 1993 Ohio App. LEXIS 720, at \*6. “Appellate review is limited to determining whether the trial court abused its discretion in finding the board’s decision was supported by reliable, probative and substantial evidence.” *Ruckstuhl*, 2009-Ohio-3146, at ¶51 (citation omitted).

{¶15} The trial court in this instance did not reach the merits of the case. Instead, it dismissed the appeal for a lack of standing. “Whether established facts confer standing to assert a claim is a matter of law. We review questions of law de novo.” *Portage Cty. Bd. of Commrs v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, at ¶90 (citation omitted).

{¶16} Harris asserts that he has standing to appeal the decision of the Board of Building Appeals because a court had previously made a finding that he owned the Main Avenue property. The Cuyahoga County Domestic Relations Court, when distributing the assets in Harris’ divorce from his wife, Marlene Harris, made a finding that Harris owned the property. He argues that res judicata and collateral estoppel apply regarding the issue of whether Harris was the owner of the Main Avenue property because the Cuyahoga court decided this issue and awarded the property to Harris when dividing the marital property.

{¶17} Pristera asserts that res judicata and collateral estoppel do not apply in this case and that the trial court correctly dismissed Harris' appeal based on a lack of standing.

{¶18} “The doctrine of res judicata applies when (1) the judgment of a prior case is valid, final and was decided on the merits; (2) the judgment in the prior case was issued by a court of competent jurisdiction; (3) both the prior and present suit involve the same parties or those whose interest are adequately close to demonstrate a relationship of privity; and (4) both the prior and present case arose from the same transaction or occurrence.” *Montecalvo v. Am. Family Ins. Co.*, 11th Dist. No. 2006-T-0074, 2006- Ohio-6881, at ¶7 (citation omitted). The application of res judicata requires “that the identical cause of action shall have been previously adjudicated in a proceeding *with the same parties* or their privities in the first action, and the party against whom the doctrine is sought to be imposed shall have had a full and fair opportunity to litigate the claim.” *Mike McGarry & Sons, Inc. v. Marous Bros. Constr., Inc.*, 11th Dist. No. 2009-L-056, 2010-Ohio-823, at ¶37 (emphasis sic) (citation omitted).

{¶19} Collateral estoppel is one aspect of the doctrine of res judicata, and precludes the relitigation in a second action of an issue or issues that have been “actually and necessarily litigated and determined in a prior action.” *Goodson v. McDonough Power Equip., Inc.* (1983), 2 Ohio St.3d 193, 195. “Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted *was a party in privity with a party to the prior action.*” *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 1994-Ohio-358 (emphasis added) (citation omitted).

{¶20} Neither of these doctrines apply in the current case. Pristera is the party against whom Harris is attempting to assert the doctrine of collateral estoppel and res judicata. Essentially, Harris asserts that Pristera is unable to claim Harris is not a real party in interest because the Cuyahoga County Domestic Relations Court found Harris to be the owner of the property at issue. Pristera was not a party to the divorce proceedings between Harris and his wife, Marlene, and has no connection with either of the parties that would establish privity, as is required when asserting res judicata and collateral estoppel. Therefore, Pristera was unable to raise the issue that Harris was not a party in interest or not the true owner of the Main Avenue property during the divorce proceedings. Harris cannot assert res judicata or collateral estoppel to bar the litigation of the issue of ownership of the Main Avenue Property in the current proceedings.

{¶21} Additionally, res judicata cannot apply because the cause of action in the prior divorce proceedings was unrelated to the present cause of action. The Domestic Relations court has a different purpose in determining the ownership of property than the trial court in the present matter. The determination made by the Domestic Relations court was as to the ownership of property between Marlene Harris and Gary Harris and neither collateral estoppel or res judicata preclude Pristera from asserting that Harris is not the property's owner.

{¶22} We now address whether the trial court properly determined that Harris did not have standing to bring an administrative appeal.

{¶23} “The common-law doctrine of standing provides that only those individuals who can demonstrate a present interest in the subject matter of the litigation and who have been prejudiced by the decision at issue are entitled to appeal the same.

*Willoughby Hills v. C.C. Bar's Sahara, Inc.*, 64 Ohio St.3d 24, 26, 1992-Ohio-111. The burden of establishing such entitlement rests with the individual seeking to appeal. *Id.*” *Hofer v. Village of N. Perry Bd. of Zoning Appeals*, 11th Dist. No. 2007-L-165, 2008-Ohio-6876, at ¶8.

{¶24} “Every action shall be prosecuted in the name of the real party in interest.” Civ.R. 17(A). “If a party is not the real party in interest, the party lacks standing to prosecute the action.” *Travelers Indemn. Co. v. R. L. Smith Co.*, 11th Dist. No. 2000-L-014, 2001 Ohio App. LEXIS 1750, at \*7, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998-Ohio-275. The real party in interest has been defined as the party who will directly be helped or harmed by the outcome of the action. The real party in interest must have a real interest in the subject matter of the litigation and not merely an interest in the outcome of the case. *Shealy v. Campbell* (1985), 20 Ohio St.3d 23, 24.

{¶25} In order to maintain an administrative appeal, the party appealing must be a real party in interest. See *Santa v. Ohio Dept. of Human Servs.* (2000), 136 Ohio App.3d 190, 195 (where the party instituting the appeal to the trial court was not the real party in interest, “the trial court did not have jurisdiction to entertain the administrative appeal”); *Village of Hills & Dales v. Ohio Dept. of Edn.*, 10th Dist. No. 06AP-1249, 2007-Ohio-5156, at ¶20 (the party filing the administrative appeal “was not a party adversely affected by the appellee’s decision because it was not and could not have been a party to the proceedings before the [administrative] agency”).

{¶26} In the present case, Harris failed to provide any evidence to the trial court that would support his assertion that he is the real party in interest. He does not contend that he is a trustee, such that he would be entitled to bring suit on behalf of the

trust. See *Phillips v. May*, 11th Dist. No. 2003-G-2520, 2004-Ohio-5942, at ¶40. He has not shown that he has title to the Main Avenue Property. He concedes in his motions before the trial court that he has not transferred the property or titled it in his name. Although the Cuyahoga County Domestic Relations Court granted him an interest in the property, as against Marlene Harris, such a finding is not dispositive of the issue of standing in this case. Additionally, Harris made no showing as to how he was associated with Pittsburgh Mellon, such that the trial court, as well as this court, could make a determination about his interest in the proceedings.

{¶27} Even if the court were to consider the 2003 Entry of the Cuyahoga County Domestic Relations Court, granting Harris an interest in the property against his wife, this does not show that he is the current owner or title holder of the property. This judgment alone does not show that Harris is a real party in interest.

{¶28} R.C. 3737.43(B) allows a party to appeal a Board of Building Appeals decision if a “responsible person is aggrieved by an order of the board, the person may appeal to the court of common pleas where the property that is the subject of the citation is located.” “Responsible person’ means the person responsible for compliance with the state fire code, including, but not limited to, the owner, lessee, agent, operator, or occupant of a building, premises, or vehicle.” R.C. 3737.01(F). Harris has not shown that he was the party responsible for the citation and complying with any building codes. He cannot be considered a responsible party under R.C. 3737.43. Since Harris did not meet the burden of showing that he was a responsible party or a real party in interest, he did not have standing to pursue the appeal before the trial court.

{¶29} The sole assignment of error is without merit.



{¶30} The Judgment Entries of the Ashtabula County Court of Common Pleas, dismissing Harris' appeal from the Ohio Board of Building Appeals' Final Order, based on a lack of standing, are affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.